

the officer before whom the deposition was taken. Thereafter, the officer shall seal the deposition, with copies thereof, in an envelope and mail the same by registered or certified mail to the administrative law judge.

(2) Subject to such objections to the questions and answers as were noted at the time of taking the deposition, and to the provisions in §1955.40(b)(1), any part or all of a deposition may be offered into evidence by the party taking it as against any party who was present, represented at the taking of the deposition, or who had due notice thereof.

(d) Whenever appropriate to a just disposition of any issue in the proceeding the administrative law judge may allow discovery by any other appropriate procedure, such as by interrogatories upon a party or request for production of documents by a party.

(e) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the administrative law judge may make any order which justice requires to limit or condition discovery in order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.

#### **§ 1955.33 Sanctions for failure to comply with orders.**

(a) If a party or an official or agent of a party fails, without good cause, to comply with an order including, but not limited to, an order for the taking of a deposition, written interrogatories, the production of documents, or an order to comply with a subpoena, the administrative law judge or the Secretary or both, for the purpose of permitting resolution of relevant issues and disposition of the proceeding without unnecessary delay despite such failure, may take such action as is just, including but not limited to the following:

(1) Infer that the admission, testimony, documents, or other evidence would have been adverse to the party;

(2) Rule that for the purposes of the proceeding, the matter or matters concerning which the order or subpoena was issued be taken as established adversely to the party;

(3) Rule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent, or the documents or other evidence;

(4) Rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

(5) Rule that a pleading, or part of a pleading, on a motion or other submission by the party, concerning which the order or subpoena was issued, be stricken or that decision on the pleading be rendered against the party, or both.

(b) Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the initial decision of the administrative law judge or an order or opinion of the Secretary. The parties may seek, and the administrative law judge may grant, such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the lack of withheld testimony, documents, or other evidence.

#### **§ 1955.34 Fees of witnesses.**

Witnesses, including witnesses for depositions, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Fees shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

### **Subpart E—Hearing and Decision**

#### **§ 1955.40 Hearings.**

(a)(1) Except as may be ordered otherwise by the administrative law judge, the Department of Labor shall proceed first at the hearing.

(2) The Department of Labor shall have the burden of proof to sustain the contentions alleged in the notice of proposed withdrawal, published under §1955.10(b)(1) but the proponent of any factual proposition shall be required to sustain the burden of proof with respect thereto.

**§ 1955.41**

**29 CFR Ch. XVII (7–1–06 Edition)**

(b)(1) A party shall be entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Any oral or documentary evidence may be received, but the administrative law judge shall exclude evidence which is irrelevant, immaterial, or unduly repetitious.

(2) The testimony of a witness shall be upon oath or affirmation administered by the administrative law judge.

(3) If a party objects to the admission or rejection of any evidence, or to the limitation of the scope of any examination or cross-examination, or to the failure to limit such scope, he shall state briefly the grounds for such objection. Rulings on all objections shall appear in the record. Only objections made before the administrative law judge may be relied upon subsequently in the proceeding.

(4) Formal exception to an adverse ruling is not required.

(c) Official notice may be taken of any material fact not appearing in evidence in the record, which is among the traditional matters of judicial notice, or concerning which the Department of Labor by reason of its functions is presumed to be expert: Provided, that the parties shall be given adequate notice, at the hearing or by reference in the administrative law judge's and the Secretary's decision of the matters so noticed and shall be given adequate opportunity to show the contrary.

(d) When an objection to a question propounded to a witness is sustained, the examining party may make a specific offer of proof of what the party expects to prove by the answer of the witness orally or in writing. Written offers of proof, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.

(e) Hearings shall be stenographically reported. Copies of the transcript may be obtained by the parties and the public upon payment of the actual cost of duplication to the Department of Labor in accordance with 29 CFR 70.62(c).

(f) Corrections of the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. Corrections may be ordered by the administrative law judge or agreed to in a written stipulation by all parties or their representatives. Where the parties are in disagreement, the administrative law judge shall determine the corrections to be made and so order. Corrections may be interlineated in the official transcript so as not to obliterate the original text.

**§ 1955.41 Decision of the administrative law judge.**

(a) Within 30 days after receipt of notice that the transcript of the testimony has been filed with the administrative law judge, or such additional time as the administrative law judge may allow, each party may file with the administrative law judge proposed findings of fact, conclusions of law, and rules or orders, together with a supporting brief expressing the reasons for such proposals. Such proposals and brief shall be served on all other parties and shall refer to all portions of the record and to all authorities relied upon in support of each proposal.

(b)(1) Within a reasonable time after the time allowed for the filing of proposed findings of fact, conclusions of law, and rules or orders, the administrative law judge shall make and serve upon each party his initial decision which shall become final upon the 30th day after service thereof unless exceptions are filed thereto.

(2) The decision of the administrative law judge shall be based solely upon substantial evidence on the record as a whole and shall state all facts officially noticed and relied upon. The decision of the administrative law judge shall include:

(i) A statement of the findings of fact and conclusions of law, with reasons and bases therefor upon each material issue of fact, law, or discretion presented on the record;

(ii) Reference to any material fact based on official notice; and

(iii) The appropriate rule, order, relief, or denial thereof.